

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3017 OF 2005
IN
NOTICE OF MOTION NO.2501 OF 2002
IN
SUMMONS FOR JUDGMENT NO.596 OF 2002
IN
SUMMARY SUIT NO.1295 OF 2000

Mr.Hasmukh Hansraj Gala ..Plaintiff

Vs.

Mr.Sunil Silk Mills and Ors. ..Defendants

Mr.Sunil More defendant in support

Mr.Tushar Bhavsar i/b Majoj Bhat for the plaintiff

CORAM : S.U.KAMDAR, J
DATED : 20TH OCTOBER, 2005

P.C.:

1. By consent of the parties the motion is taken up for hearing and finally disposed of.

2. Motion is taken out for setting aside an order dt.19.8.05. By the said order Notice of Motion No.2501 of 2002 was dismissed for non-appearance of the plaintiff and his advocate. The said Notice of Motion itself was to set aside an exparte order

passed by Vazifdar, J in Summons for Judgment No.596 of 2000.

3. In the present case, the explanation furnished in the affidavit in support of motion is totally false. The contention raised is that the matter was on board on 4.8.05 and 11.8.05 but the said matter did not reach for the hearing and the Board was discharged. Neither on 4.8.05 nor on 11.8.05 the board was discharged. Subsequent averments made are that the matter was on board on 18.8.05 and it was to continue on next day i.e. 19.8.05 which was motion day. However, defendant has stated in affidavit that he was informed by the office that the motions are not going to be taken up on 19.8.05 There is no material detail as to the aforesaid statement made in the said affidavit. In fact right from the beginning of the assignment motion days are assigned as Thursday and Friday and every Thursday and Friday motions are taken up. In that view of the matter, the statements made in para 4 and 5 are false. In para 6 the explanation given is that the Advocate was out of Bombay and had gone to Tirupati during 15.8.05 to 19.8.05. I

do not desire to make any comments on this but suffice to say that no case is made out for restoration of motion no.2501 of 2002. No explanation of any nature is furnished in affidavit in support thereof. Apart therefrom I find that neither the plaintiff nor his advocate are sincere in prosecuting the present proceedings. Even after ex-parte order passed to set aside the same also, the plaintiff has committed default in appearance. In my view, such conduct on the part of the plaintiffs and his advocate cannot be simply condoned because it would only lead to miscarriage of justice as a party can protect the litigation in this manner. In view thereof, motion is dismissed. No order as to costs.